IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6669 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHABHAI RAMABHAI RATHOD

Versus

SHRIDHAR SAHU S/O. SHRINATH SAHU

Appearance:

1. Special Civil Application No. 6669 of 2004

MR AJ YAGNIK for Petitioner No. 1-2

MR PRABHAKAR UPADYAY for Respondent No. 1

MR KM PATEL for Respondent No. 2

MR TR MISHRA for Respondent No. 3

DELETED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 30/07/2004

ORAL JUDGEMENT

Rule. Shri Prabhakar Upadyay waives service of notice of rule on behalf of respondent No.1. Shri K.M. Patel waives service of notice of rule on behalf of respondent No.2 while Shri T.R.Mishra waives service of notice of rule on behalf of respondent No.3. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. Shortly stated, it is the case of the petitioners that the petitioners had raised an industrial dispute before the Labour Court, Ahmedabad being Reference (LCA) No.90/99 which came to be allowed by the award dated 24.10.2002. The said award however was passed ex parte and that therefore the respondent No.1 filed an application for setting aside the ex-parte award. It is the case of the petitioners that though the petitioners had not authorized the respondent No.3 to appear for the petitioners or to consent to the said ex-parte award being set aside, the respondent No.3 has forged the signatures of the petitioners on the vakalatnama, appeared in the said proceedings and consented to the ex-parte award being set aside. On the basis of the said consent, the Labour Court was pleased to set aside the ex-parte award by its order dated 26.6.2003. It is also the case of the petitioners that the petitioners on coming to know about the said fact filed an application dated 22.6.2004 before the Labour Court and requested that the order dated 26.6.03 be recalled. In the petition, the petitioners have further stated that despite the said application dated 22.6.04, the concerned Labour Court without deciding the same is proceeding with the hearing of the reference itself.

3. I find that when serious allegations have been made in the application dated 22.6.04 regarding unauthorised representation of the advocate, respondent No.3, and when the petitioners have on affidavit stated before this Court that the said respondent No.3 was never authorized to appear on their behalf and the vakalatnama produced by the respondent No.3 contains forged signatures, the Labour Court ought to have at least considered and decided the said application before proceeding further with the hearing of the reference. Since the petitioners have challenged the validity of the order dated 26.6.2003 itself, the Labour Court could not have acted upon it further and proceeded with the hearing of the reference until at least the application dated 22.6.04 filed by the petitioners is disposed of.

4. In view of this discussion, the present petition is disposed of by directing the Labour Court, Ahmedabad to first hear and decide the application dated 22.6.04 filed by the petitioners herein and dispose of the same in accordance with law. Until such time the Labour Court decides the said application dated 22.6.04, the further proceedings in the reference No.90/99 shall stand stayed. The Labour Court shall decide the application dated 22.6.04 without being influenced by any of the observations made in the present order. Needless to say that even if the application dated 22.6.2004 is allowed by the Labour Court, the Labour Court will be at liberty to decide afresh the application for setting aside the ex-parte award filed by the respondent No.1 herein on merits.

5. Subject to the above directions, the petition stands disposed of. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)
(vjn)